

## Injured Softball Player Could Sue for "Take-Out Slide"

**SUMMARY:** A woman playing second base in a co-ed recreational softball game had a legal right to sue the runner who slid into her knee and injured her. The Supreme Court of Rhode Island decided *Kiley v. Patterson* on November 2, 2000.

**BACKGROUND:** Lori Kiley, an experienced softball player, joined a co-ed softball league. During the game in question, Kiley was playing second base. Patterson, an opponent, was a runner on first base. The batter following Patterson hit a ground ball to the third baseman. In his effort to avoid a force-out at second base (that is, Kiley catching the ball and touching the base before Patterson reached it), Patterson slid into second with at least one of his feet raised in the air. Patterson's foot struck Kiley in the knee injuring her.

Kiley sued Patterson for damages relating to her injury. Patterson filed a motion for summary judgment asking the court to rule in his favor before the trial. Patterson asserted that by signing up to participate in the sport, Kiley assumed the risk that she might be injured during play. The trial court granted Patterson's motion and Kiley appealed to the Supreme Court of Rhode Island.

**ANALYSIS:** A motion for summary judgment is an effort to win a case without going to trial. To prevail on a summary judgment motion, the movant--that is, the party that files the motion--must show that there are no material factual disputes in the matter and that he or she is entitled to win, given those facts, as a matter of law.

Kiley argued that her claim should be decided by the court under the rules of ordinary negligence. Under a negligence standard, a plaintiff must show that the defendant owed her a duty of care, that he breached that duty, that the breach was the cause of the plaintiff's injury, and that she was in fact injured. Because a certain amount of physical contact is inherent in most team sports, the court refused to apply an ordinary negligence standard. It was reluctant to apply this standard for two reasons. First, it did not want to create law that would discourage players from trying their hardest in athletic contests. Second, the court did not want to create a flood of lawsuits by every person who gets hurt playing sports.

Anticipating the court's refusal to apply ordinary negligence, Kiley argued that even under the stricter standard of recklessness or willful misconduct, she should still prevail. To win under this standard, Kiley needed to show that Patterson acted with reckless disregard for her safety, or intentionally tried to injure her with his slide. The court, following the example of other courts that had considered sports-related personal injury suits, determined that this was the correct standard to apply.

Kiley had offered evidence that Patterson's slide was reckless and against the rules. In her complaint, Kiley asserted that Patterson had raised at least one of his feet as he slid toward her. She also had an affidavit from a teammate stating that Patterson's conduct was "uncalled for and clearly outside the bounds of the game being played." Kiley also had deposition testimony from the softball league commissioner. (A deposition is a witness statement taken before trial.) He stated that take-out slides were prohibited by league rules, and that players could be warned or ejected for making take-out slides or using unnecessary roughness while running the bases.

The Supreme Court of Rhode Island found that Kiley had offered evidence that might convince a jury that Patterson had acted recklessly or willfully when he slid into her. If he did execute a take-out slide, he violated league rules and thus committed a prohibited act for which

Kiley had not assumed the risk. The court therefore concluded that the trial court had improperly granted summary judgment to Patterson. It reversed the lower court and remanded the case for trial, so that a jury could determine whether or not Patterson acted recklessly or willfully in his collision with Kiley.

**EXCERPTS FROM THE COURT'S OPINION (By Justice Flanders):** "After reviewing the supplemental affidavits and other evidence presented by Kiley, the motion justice granted Patterson's motion. The court concluded that the evidence presented did not show any recklessness or intentional misconduct on Patterson's part. The motion justice ruled:

What was going on here, however, was something that was permitted by this sport; to wit, sliding into the base. This is not a situation where in the league rules that prevailed someone had made a determination that sliding would not be permitted in these league games. Sliding was permitted.

The inherent nature of the slide on a close play is that it better be quick because we're talking about a runner trying to outrace the ball. That necessarily means that the runner, if the person intends to slide, had better be moving quickly, had better be moving forcefully, and had better be moving with a good aim towards the base....

"To be sure, Kiley was a veteran softball player. Hence, she was well aware of the risks inherent in playing this game, including the common knowledge that players may slide into one another in the course of avoiding a force out at second base. She had played in numerous softball games and was experienced at playing this particular position. As a result, she must be deemed to have assumed the normal risks of contact inherent in playing softball, including the risk that other players might negligently injure her while sliding into second base. But it cannot be concluded as a matter of law that she assumed the risk of sustaining injuries as a result of deliberate or reckless misconduct on the part of opposing players acting in violation of league rules. A boxer may assume the risk of a negligent low blow, but a deliberate punch to his groin would still be actionable.

"Given this evidence and the applicable legal principles, we are of the opinion that the motion justice erred in concluding that Kiley had voluntarily and knowingly assumed the risk of incurring the injury she suffered and that no evidence existed to suggest that Patterson's conduct violated the applicable reckless and/or intentional misconduct standard of care. Rather, we hold that these are material issues of fact requiring determination by the fact-finder, including a resolution of whether Patterson was merely negligent or whether he acted deliberately or in reckless disregard of injuring Kiley when he slid into her knee at second base with his foot raised high and thereby injured her in the manner alleged."

